

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TREVOR BROWN,

Plaintiff,

-against-

**ANSWER TO COMPLAINT
ON BEHALF OF THE CITY
OF NEW YORK**

THE CITY OF NEW YORK, CAPTAIN JOHN DOE,
CORRECTION OFFICER NANCY, CORRECTION
OFFICER J.T., AND OTHER NEW YORK CITY
DEPARTMENT OF CORRECTIONS EMPLOYEES
WHOSE NAMES ARE UNKNOWN AT THIS TIME,

07 CV 6163 (RMB) (DFE)

Jury Trial Demanded

Defendants.

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Defendant City of New York, by its attorney, Michael A. Cardozo, Corporation
Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon
information and belief, as follows¹:

1. Denies the allegations set forth in paragraph "1" of the complaint, except
admits that plaintiff purports to proceed as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except
denies knowledge or information sufficient to form a belief as to the truth of the allegations
concerning plaintiff's alleged injuries.
3. Denies the allegations set forth in paragraph "3" of the complaint, except
admits that plaintiff purports to proceed as stated therein.

¹ On information and belief, the individuals identified in the caption of the Complaint as Correction Officers
"Nancy" and "J.T." have not yet been served with the Complaint in this action, and therefore are not defendants at
this time.

4. Denies the allegations set forth in paragraph "4" of the complaint, except admits that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

5. Deny the allegations set forth in paragraph "5" of the complaint, except admits that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

6. Denies the allegations set forth in paragraph "6" of the complaint, except admits that on or about September 16, 2004, Plaintiff was incarcerated at the Anna M. Kross Center.

7. Denies the allegations set forth in paragraph "7" of the complaint, except admits that plaintiff is presently housed at Attica Correctional Facility in Attica, New York.

8. Denies the allegations set forth in paragraph "8" of the complaint, except admits that the City of New York is a municipal corporation, that the City of New York maintains the New York City Department of Correction, and respectfully refers the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City of New York and the New York City Department of Correction.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the complaint as they pertain to the unidentified defendant.

10. Denies knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the complaint as they pertain to the unidentified defendant.

11. Denies knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the complaint as they pertain to the unidentified defendant.

12. Denies knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint as they pertain to the unidentified defendants.

13. Denies the allegations set forth in paragraph "13" of the complaint.

14. Denies the allegations set forth in paragraph "14" of the complaint.

15. Denies the allegations set forth in paragraph "15" of the complaint.

16. Denies the allegations set forth in paragraph "16" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's alleged injuries.

17. Denies the allegations set forth in paragraph "17" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's alleged injuries.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the complaint.

19. Denies the allegations set forth in paragraph "19" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning punitive segregation.

20. Denies the allegations set forth in paragraph "20" of the complaint.

21. Denies the allegations set forth in paragraph "21" of the complaint.

22. Denies the allegations set forth in paragraph "22" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's alleged injuries.

23. In response to the allegations set forth in paragraph "23" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1" to "22" inclusive of this answer, as if fully set forth herein.

24. Denies the allegations set forth in paragraph "24" of the complaint.

25. Denies the allegations set forth in paragraph "25" of the complaint.

26. Denies the allegations set forth in the 2nd paragraph "24" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

27. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

28. Defendant, City of New York, has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

29. Any injury alleged to have been sustained, resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of third parties, and was not the proximate result of any act of the defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

30. Plaintiff cannot obtain punitive damages as against the City of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

31. At all times relevant to the acts alleged in the Complaint, defendant, City of New York, acted reasonably in the proper and lawful exercise of its discretion.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

32. Plaintiff's claims may be barred, in whole or in part, by the applicable limitations period.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

33. At all times relevant to the acts alleged in the Complaint, the duties and functions of defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant, City of New York, is entitled to governmental immunity from liability.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

34. To the extent that the complaint alleges any claims against the City of New York arising under state law, such claims are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

35. Plaintiff may have failed to exhaust his administrative remedies.

WHEREFORE, defendant City of New York, requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 28, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City of New York
100 Church Street, Room 3-311
New York, New York 10007
(212) 788-0899

By: 

STUART E. JACOBS (SJ 8379)
Assistant Corporation Counsel

To: Kristen E. Finlon, Esq (By ECF)
Beranbaum Menken Ben-Asher &
Bierman LLP
80 Pine Street, 32nd Floor
New York, NY 10005
(212) 509-1616

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-against-
THE CITY OF NEW YORK, CAPTAIN JOHN DOE, CORRECTION OFFICER NANCY, CORRECTION OFFICER J.T., AND OTHER NEW YORK CITY DEPARTMENT OF CORRECTIONS EMPLOYEES WHOSE NAMES ARE UNKNOWN AT THIS TIME,
Defendants.
ANSWER TO COMPLAINT
MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendant City of New York</i> <i>100 Church Street</i> <i>New York, N.Y. 10007</i> <i>Of Counsel: Stuart E. Jacobs</i> <i>Tel: (212) 788-0899</i>
<i>Due and timely service is hereby admitted.</i> <i>New York, N.Y., 2007</i> <i>..... Esq.</i> <i>Attorney for</i>